

THE **LAW SOCIETY**
OF NORTHERN IRELAND



COMMITTEE FOR JUSTICE INQUIRY INTO VICTIMS & WITNESSES

Response of the Law Society of Northern Ireland

*96 Victoria Street
Belfast BT1 3GN
Tel: 02890 23 1614
Fax: 02890 232606
Email: info@lawsoc-ni.org
Website: www.lawsoc-ni.org*

Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitors' profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,400 solicitors working in some 540 firms, based in over 74 geographical locations throughout Northern Ireland. Members of the Society represent private clients in legal matters. This makes the Society well placed to comment on policy and law reform proposals.

In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, the Society is keen to ensure that its voice is heard. The solicitors' profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

November 2011

EXECUTIVE SUMMARY

Introduction

- The solicitors' profession interact with victims and witnesses each and every day. In addition to interacting with victims through the court process solicitors often advise victims who are disappointed with the level of service they have received from criminal justice agencies.

Compensation

- The Society's response notes the importance of ensuring victims are compensated for losses suffered and raises this as an issue which the Committee may wish to consider.

Confidence

- The response considers the key factors required to be in place to ensure victims and witnesses can have confidence in the justice system.
- The complexity of the criminal process is discussed along with the need to ensure that victims are fully informed throughout the various stages of an investigation and prosecution.
- The impact of delay on victims and witnesses and the importance of tacking avoidable delay in the criminal justice system are highlighted.
- The response also refers to the importance of ensuring adequate provision for those who do not have English as their first language.

Access to Justice

- The need to ensure a properly functioning justice system is emphasised.
- The importance of ensuring access to justice for victims is discussed, the position of the victims of domestic violence is provided as an example.

Conclusion

- In the conclusion the Society refers to the importance of ensuring that due regard is given to the human rights of all.

LAW SOCIETY RESPONSE TO COMMITTEE FOR JUSTICE

1.1 The Society welcomes the opportunity to contribute to the Committee for Justice inquiry into the criminal justice services available to victims and witnesses of crime in Northern Ireland. Solicitors practising in the criminal field who act for both prosecution and defence interact with victims and witnesses on a daily basis. In addition, solicitors are often called upon to ensure that victims obtain proper redress and the Society seeks to ensure that victims have access to the advice and support needed to obtain that redress.

1.2 Solicitors regularly advise and assist members of the public who are seeking compensation for criminal injuries which they have suffered. Solicitors will also advise members of the public who are discontent with the level of service they have received from the criminal justice sector. One specific example is advising on a decision of the Public Prosecution Service not to prosecute an individual.

1.3 In this response the Society will provide comments on three broad areas of relevance to considering the position of victims and witnesses, namely compensation, confidence in the system and access to justice.

Compensating Victims

2.1 It is important that the victims of violent crimes who have suffered demonstrable injuries are able to obtain some form of compensation for losses incurred. The criminologist Ferri said “... *the State should take into account the rights of the victim, paying him an immediate satisfaction, especially when blood has been shed, looking to the offender to reimburse it for its expense.*”¹ The Justice Act (Northern Ireland) 2011, which the Committee considered in detail, makes provision for a levy on offenders to make some form of financial recompense for the crimes they have committed and injuries they have inflicted. Funds gathered through this levy are invested in the provision of services for victims. The quotation by Ferri states that the preferred option is for the offender him/herself to reimburse the victim. However in reality offenders rarely have sufficient means to reimburse victims. It therefore falls on society generally and the State to compensate victims for losses suffered.

2.2 The Criminal Injuries Compensation Scheme 2009 makes provision for the payment of compensation to victims of violence in Northern Ireland who have been physically and/or mentally injured or who are a dependant or relative of a deceased victim. The Scheme is administered by the Criminal Injuries Compensation Agency, an agency within the Department of Justice. The Scheme sets out the specific requirements for those seeking compensation. The level of compensation payable to an individual is laid down in the tariff.

¹ See for further analysis Michael O’Connell ‘Criminal Injuries Compensation: Revisiting the Rationale for State Funded Compensation for Crime Victims’ Canberra June 2003 available at: <http://www.victimsupport.act.gov.au/res/File/O'Connell.pdf>

2.3 Since 2002 those seeking compensation for criminal injuries have been unable to recover the costs of legal advice and representation provided to assist them in bringing their claim for compensation. Information and advice relating to the application process is provided by Victims Support.

2.4 The Committee may wish to consider whether the current arrangements are meeting the goal of ensuring that members of the public are able to access compensation for their injuries. The Society has some concern that the strict application of the eligibility criteria may be denying injured parties compensation in deserving cases. In particular, the requirement to inform the police of the incident giving rise to their injuries 'without delay' is believed to have resulted in a number of deserving applicants being denied compensation. The Committee may wish to gather information on the number of applications that are refused and the reasons for refusal. The Committee may also wish to consider whether there can generally be more done to ensure that offenders reimburse victims for losses suffered.

Confidence

3.1.1 It is of fundamental importance that both victims and witnesses have confidence in the criminal justice system. A wide variety of factors may lead to victims and witnesses losing confidence in the justice system. In this submission the Society will highlight two factors and will also refer to the needs of victims and witnesses without English as their first language.

Keeping Victims Informed

3.2.1 The process of investigating and prosecuting a case can be prolonged and difficult for the victim to comprehend. At various stages throughout the process decisions are taken which have significant repercussions for how the offender is dealt with. The Society considers that it is important that victims are kept informed throughout the process of investigating and prosecuting a case of the prospect of success and the various outcomes that may occur.

3.2.2 The Committee will be aware that a minority of reported crimes result in the arrest and charge of an offender. If an offender is charged with an offence, it is possible that a formal prosecution will not be brought. This may be because the Public Prosecution Service (PPS) do not consider that there is sufficient evidence against the accused or it does not feel it is in the public interest to prosecute the accused. The PPS may also consider that the suspect should be dealt with by way of a diversionary measure. It is important that victims are informed of the various decisions that may be taken. Where decisions are taken the reasons should be explained to them.

3.2.3 There have been a number of high profile challenges to decisions of the PPS not to prosecute certain individuals. The Society notes that the PPS provides detailed information regarding how it goes about deciding whether to bring a

prosecution or not. The Committee may wish to consider whether more can be done to ensure the victim and/or their family fully understand the decision making process.

3.2.4 Where an offender is formally prosecuted, he/she may be found not guilty and the victims should be informed of this possibility. He/she may either plead guilty or be found guilty, in which case he/she may receive a range of sentences, including a fine, custodial sentence or community sentence. It may be difficult for a victim to understand why a non-custodial sentence would be handed down by the court and it is important that victims are appropriately advised of the purposes of such sentences.

3.2.5 A victim may wish to provide a victim impact statement to the court to describe what affect the crime has had upon them. This can be presented to the judge before sentence is passed. The Society is concerned that there may be a lack of understanding around the relevance of a victim impact statement. In particular the Society is concerned that the ability to make a statement may lead to an expectation of a harsher sentence for the offender. It is important that victims wishing to make an impact statement are provided with appropriate guidance.

Avoidable Delay

3.3.1 The Society has consistently highlighted the importance of ensuring that criminal prosecutions run efficiently, without undue delay. Preparing a case for trial can be a lengthy exercise which requires the cooperation of various different parties and agencies. Furthermore issues can arise once a trial commences that require investigation. Whilst the trial process can take some time, there is concern that delays which could be avoided are too common.

3.3.2 The Criminal Justice Inspectorate Report into Avoidable Delay referred to the impact delay can have upon both victims and witnesses;

“To victims, delays can reduce the chances of a successful prosecution as events may become blurred to witnesses. For witnesses, lengthy investigations followed by numerous adjournments diminish recollections, increase fears and frustrations with the system and make co-operation more unlikely in the future.”²

The Report later refers to the impact of delay on victims obtaining closure. Delay undoubtedly adds significant stress and pressure onto victims.

3.3.3 The Society is keen to see delay tackled and advocates strongly for increased efficiency within the criminal justice system. While there may be a perception that delay is in the financial interests of a defence solicitor, the introduction of a standard fee regime for all criminal cases means quite the opposite is true.

² Available at: <http://www.cjini.org/CJNI/files/c0/c0243f51-1e73-47e8-a6fa-344d5f0063c5.PDF>

Victims and Witnesses without English as a first language

3.4.1 Specific regard is required for victims and witnesses who do not have English as their first language. The Society has previously raised concerns regarding the availability of appropriately qualified interpreters in this jurisdiction who are able to assist victims and witnesses in understanding and participating in the court process. The Society recently responded to the NI Courts & Tribunals Service consultation on the provision of interpretation services. In its response, the Society highlighted the difficulties which solicitors, in particular defence solicitors, encounter when attempting to obtain the services of an interpreter.

3.4.2 Where a victim does not have English as their first language and has a limited understanding of English, it is important that there is adequate provision of interpretation services throughout the entire process, from reporting a crime to the provision of information and assistance when an offender is released from custody.

3.4.3 It is important that witnesses who do not have English as their first language are given appropriate support. This is essential to ensure the reliability of their evidence and the integrity of the trial process.

Access to Justice

4.1 Whilst the provision of legal aid is often viewed as simply being for the benefit of offenders, it in fact benefits victims and society generally. The provision of a well funded legal aid system guarantees that the defendant's solicitor is able to ensure the court is fully informed of the defendant's case and that all evidence is subject to rigorous scrutiny to test its reliability. This guards against occurrences of miscarriages of justice and ensures that victims can have confidence that the convicted person is the perpetrator.

4.2 Victims may themselves require access to legal aid. One example of this is a victim of domestic violence who may seek to obtain a Non-Molestation Order to protect against a violent partner. There are costs involved in obtaining such an order. The Society raised concerns with the Legal Services Commission that the financial eligibility requirements for those seeking a Non Molestation Order to access legal aid were inhibiting victims of domestic violence from obtaining such an Order and therefore placing such persons in danger. The Department of Justice has subsequently removed the upper capital and income limits for legal aid applications for those seeking to secure Non Molestation Orders in a Magistrate's Court. This has gone some way towards ensuring the victims of domestic violence are able to access justice.

4.3 Issues relating to the victims of domestic violence require specific consideration. The Society has highlighted this example to demonstrate the role of legal aid in assisting victims. Further examples include providing advice and representation to

victims who are dissatisfied with the level of service they have received from a criminal justice agency or with a decision of an agency. The provision of legal aid to victims in need ensures that they are able to hold the criminal justice agencies to account where they have been let down.

Conclusion

5.1 The Society has identified three broad issues of relevance to the Committee's inquiry into victims and witnesses; compensating victims, ensuring victims and witnesses have confidence in the justice system and ensuring victims have access to justice.

5.2 As the Committee takes forward its review, particularly as it considers provisions to assist witnesses, it will wish to have regard for the right to a fair trial, as protected by Article 6 of the European Convention on Human Rights. The distress caused to a victim where a conviction is overturned is unquantifiable. It is therefore of fundamental importance that where a conviction is made that it is safe and the victim can rest in the knowledge that the person who injured them or their loved one has been brought to justice.